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 7 United States of America

8 UNITED STATES DISTRICT COURT

9 SOUTHERN DISTRICT OF CALIFORNIA

| | | |
|--------------------------------|---|-------------------------------|
| 10 UNITED STATES OF AMERICA, |) | Criminal Case No. 07cr3104LAB |
| |) | |
| 11 Plaintiff, |) | DATE: December 17, 2007 |
| |) | TIME: 2:00 p.m. |
| 12 v. |) | |
| |) | GOVERNMENT'S RESPONSE AND |
| |) | OPPOSITION TO DEFENDANTS' |
| 14 HECTOR PERALTA-RAMIREZ (2), |) | MOTIONS TO: |
| |) | |
| 15 Defendant. |) | (1) COMPEL DISCOVERY AND |
| |) | (2) FILE ADDITIONAL MOTIONS. |
| 16 |) | |
| |) | TOGETHER WITH STATEMENT OF |
| 17 |) | FACTS, MEMORANDUM OF POINTS |
| |) | AND AUTHORITIES AND |
| 18 |) | GOVERNMENT'S MOTION FOR |
| |) | RECIPROCAL DISCOVERY |

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 20 COMES NOW the Plaintiff, UNITED STATES OF AMERICA, by and
 21 through its counsel, Karen P. Hewitt, United States Attorney, and
 22 Carlos Arguello, Assistant United States Attorney, and hereby
 23 files its response and opposition to Defendants' above-referenced
 24 motions. This response is based upon the files and records of
 25 this case, together with the attached statement of facts,
 26 memorandum of points and authorities and the Government's motion
 27 for reciprocal discovery.
 28

I.**CURRENT CASE STATUS**

By the time this four-defendant case is heard by the Court on 17, 2007, the parties anticipate the above-referenced defendant to be the only remaining defendant who has not yet pled guilty before the magistrate. Counsel for this defendant is David L. Baker. Mr. Baker is currently out of the country and will not be present for the upcoming hearing. The Government anticipates that the parties will request a trial date at the hearing. In the meantime, Mr. Baker's client will plead guilty before the magistrate.

II.**STATEMENT OF FACTS**

On October 29, 2007, Border Patrol Agents arrested Hector Peralta-Ramirez ("Defendant") after being identified as a foot guide who led six undocumented aliens into the United States from Mexico. Border officials apprehended Defendant after he entered a 1998 Ford Windstar driven by a co-defendant. The six aliens were also found in the car.

III.**POINTS AND AUTHORITIES****A. DISCOVERY**

The Government has produced approximately one hundred (100) pages of discovery. Additional discovery will be produced as it is available. At this time, the Government is awaiting further Border Patrol reports, photographs, and evidence seized from Defendants' vehicles and home which will be provided to Defendants once they have been received. The discovery produced is in excess

1 of that required by Rule 16 of the Federal Rules of Criminal
2 Procedure and the Jencks Act (now covered by Rule 26.2 of the
3 Federal Rules of Criminal Procedure). As to the physical
4 evidence, the Government will make it available for viewing by
5 defense counsel at a mutually convenient time and place.

6 As to exculpatory information, the Government is well aware of
7 its obligation under Brady v. Maryland, 373 U.S. 83 (1963) and
8 will comply.

9 The Government will provide a list of witnesses in its trial
10 memorandum. The grand jury transcript of any person who will
11 testify at trial will also be produced.

12 The Government has provided and will continue to provide
13 information within its possession or control pertaining to the
14 prior criminal history of the Defendants. Evidence of other acts
15 or crimes by the Defendants similar to this drug smuggling
16 incident will be provided once the information is received. The
17 Government intends to seek permission to introduce this evidence
18 under Federal Rule of Evidence 404(b) at trial. The Government
19 also intends to seek permission to impeach Defendants with their
20 felony convictions under Federal Rule of Evidence 609(a)(1) if
21 either testifies at trial.

22 The Government will produce the reports of any experts that it
23 intends to use in its case-in-chief at trial or are material to
24 the preparation of the defense.

25 In view of the above-stated position of the Government
26 concerning discovery, it is respectfully requested that no orders
27 compelling specific discovery by the Government be made at this
28 time. The Government also respectfully requests reciprocal

1 discovery of the Defendants. If and when individual problems
2 arise which cannot be resolved between counsel for Defendants and
3 the Government, the matters can be submitted to the Court for
4 decision.

5 **B. REQUEST TO FILE FURTHER MOTIONS**

6 The Government does not oppose Defendant's request to file
7 further motions if based on newly obtained discovery.

8 **IV.**

9 **GOVERNMENT'S MOTION FOR RECIPROCAL DISCOVERY**

10 The Government hereby requests Defendants to deliver all
11 materials to which the Government may be entitled under Federal
12 Rules of Criminal Procedure 16(b) and 26.2.

13 **V.**

14 **CONCLUSION**

15 For the foregoing reasons, the Government respectfully
16 requests that Defendant's motions be denied where opposed and that
17 the Government's motion for reciprocal discovery be granted.

18 DATED: December 13, 2007.

19 Respectfully submitted,

20 CAROL C. LAM
21 United States Attorney

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23 CARLOS ARGUELLO
24 Assistant U.S. Attorney
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